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Excerpt of 9/19/08 Hearing Transcript

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555

In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., et al.

Debtors.

One Bowling Green
New York, New York

September 19, 2008

4 : 36 PM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

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2 HEARING re Debtor's Motion for an Order Pursuant to Section 105
3 of the Bankruptcy Code Confirming Status of Citibank Clearing
4 Advances

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6 HEARING re Debtor's Motion to (a) Schedule a Sale Hearing; (b)
7 Establish Sales Procedures; (c) Approve a Breakup Fee; and (d)
8 Approve the Sale of the Purchased Assets and the Assumption and
9 Assignment of Contracts Relating to the Purchased Assets

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Transcribed by: Lisa Bar-Leib

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1 going to ask that question. So --

2 THE COURT: I hate to be that predictable.

3 MR. MILLER: There is a document -- maybe it'd be
4 better, Your Honor, if we do it orally.

5 THE COURT: Fine.

6 MR. MILLER: My partner, Ms. Fife, will do that. And
7 with some assistance from Ms. --

8 THE COURT: Let me just check on something because --
9 and this is purely technical. During the first phase of the
10 hearing, I was told that those people who are listening in
11 spillover courtrooms had a very hard time hearing me. I'm
12 having some difficulty as compared with our last hearing with
13 the amplification coming out of the podium. And I just want to
14 make sure that we're not suffering system overload. Okay.
15 That's on. And let me also make the announcement, whenever
16 anyone speaks for the record, this is always true here, but
17 given the number of people, please identify yourself before
18 speaking.

19 MS. FIFE: Thank you, Your Honor. Lori Fife from
20 Weil Gotshal & Manges on behalf of the debtors. Let me try to
21 summarize the changes that were made to the transaction. In
22 terms of the economic changes, they result largely because of
23 the markets, unfortunately. And from the time that the
24 transaction was actually entered into till now, the markets
25 dropped and the value of the securities dropped as well.

1 So, originally, we were selling assets that had a
2 value of seventy -- approximately seventy billion dollars. And
3 today, Your Honor, we're only selling assets that have a value
4 of 47.4 billion dollars.

5 Barclays is assuming liabilities, however, of 45.5
6 billion dollars in connection with those assets. So that has
7 not changed from the original transaction. There was an upside
8 sharing in the original transaction. There was going to be a
9 true-up twelve months later on and that has been eliminated
10 from this transaction.

11 Barclays is still agreeing to pay the cure amounts on
12 any leases that it assumes or that we assume and assign to it.
13 Barclays is also agreeing to the same employee compensation
14 arrangements. And it is also agreeing to pay the 250 million
15 dollars of goodwill to LBI.

16 With respect to the real estate assets, Your Honor,
17 that was -- we had said at the last hearing, I believe, it was
18 approximately a billion dollars. Since that time, an appraisal
19 has come in and it is below that amount. The contact had a
20 provision which allowed the purchaser really to purchase the
21 building at the appraised amount. So we have some negotiations
22 to go, but I believe that the purchase price will come down by
23 approximately a hundred million dollars.

24 There were two other real estate properties also
25 which we received appraisals for which, similarly, were lower

1 than we had anticipated, unfortunately. So I think,
2 cumulatively, we're expecting that the purchase price will come
3 down by a hundred to maybe 200 million dollars for the real
4 estate.

5 Some other changes that were made to the contracts
6 affect what are called purchase assets and what are excluded
7 assets. There was some confusion as to which subsidiaries, if
8 any, were being sold. And we've clarified in a clarification
9 letter which we're hoping to finalize and actually present to
10 Your Honor whenever it comes down here. But in that letter,
11 we're going to clarify that the only subsidiaries that are
12 being purchased by Barclays are Lehman Brothers Canada Inc.,
13 Lehman Brothers Sudamerica SA and Lehman Brothers Uruguay SA.
14 The latter two subsidiaries that I just referred to relate to a
15 business that is called PIM, or Private Investment Management
16 Business, which is a business that was not part of the original
17 deal but is now being purchased by Barclays.

18 THE COURT: For no additional consideration?

19 MS. FIFE: That's correct, Your Honor.

20 THE COURT: And what's that business worth?

21 MS. FIFE: It's essentially just people, Your Honor.
22 It's the high net worth individual brokerage business. And
23 it's really just the people who are in those offices.

24 THE COURT: And their rolodexes.

25 MS. FIFE: And their rolodexes, exactly. The

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1 customer accounts were being transferred anyway.

2 There was a change that was made to the license of
3 the Lehman Brothers' name. It was perpetual. It is now two
4 years but we don't really believe that that's a problem. The
5 IMD business, which is essentially Neuberger Berman and some
6 other related entities, will have a perpetual license to use
7 the name.

8 There was a provision in the old agreement pursuant
9 to which the parties were sharing the residential real estate
10 mortgages. There is no longer that provision. Barclays was
11 required to post collateral, actually this morning, in order to
12 get DTC to open up trading. And that collateral was posted --
13 the residential real estate mortgages was posted to DTC.
14 Pursuant to this transaction, Barclays is taking over and
15 guaranteeing all of those transactions. And they are assuming
16 the risk related to those transactions so that collateral will
17 remain with Barclays.

18 THE COURT: What's the aggregate value of the posted
19 collateral?

20 MS. FIFE: One second, Your Honor.

21 (Pause)

22 MS. FIFE: Your Honor, I'm not -- excuse me? There
23 are 300,000 trades but we're not sure the value of the
24 collateral. Perhaps during the rest of the hearing we can find
25 that amount out for Your Honor.

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1 THE COURT: Okay. I'm not entirely sure I'm
2 understanding the overall impact of the change in the sharing
3 of the residential mortgage collateral and whether or not that
4 constitutes a benefit to the estate or a detriment to the
5 estate. Which do you think it is?

6 MS. FIFE: It's hard to tell. It depends on which
7 way those trades come out. But we believe it's a benefit to
8 the estate because it allowed trading to continue this morning
9 because DTC and NASDAQ were unwilling to allow Lehman to
10 continue trading without this posting of collateral which was
11 very important to the company, obviously. So we were able to
12 work out this arrangement whereby Barclays would stand behind
13 the trades. It is the debtors' belief that it's a necessary
14 part of the transaction.

15 THE COURT: Okay. And I realize I'm asking a lot of
16 questions about things that may have been fully explained when
17 I was in chambers, but Barclays' undertaking to stand behind,
18 as you put it, this posted collateral, how is that documented?
19 And what happens in the event that the transaction that we're
20 now talking about is not approved or is delayed?

21 MS. FIFE: It was documented in the First Amendment
22 to the asset purchase agreement, which we actually do have and
23 if the transaction is not consummated -- I'm actually not sure
24 of the answer, Your Honor. I'm sorry. I believe Barclays is
25 liable. Oh, okay. So, I'm advised by my partner that if the

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1 transaction's not consummated then the transactions -- all the
2 trades come back to Lehman, and Lehman is then responsible for
3 them. Excuse me for one second, Your Honor.

4 (Pause)

5 MS. FIFE: I'm being told that if the liabilities are
6 less than the collateral then the excess collateral comes back
7 to Lehman.

8 THE COURT: And if the liabilities are greater?

9 MS. FIFE: We have no further obligation.

10 THE COURT: Okay.

11 MS. FIFE: We also modified the agreement -- would
12 you like the representative from DTC to explain that in more
13 detail, Your Honor?

14 THE COURT: Mr. Hirshon, I'd be happy to hear from
15 you.

16 MR. HIRSHON: Good afternoon, Your Honor. Nice to be
17 before you. Sheldon Hirshon, Proskauer Rose, representing the
18 composite -- the trust clearing corporations. Your Honor, the
19 essence of the transaction is to move all of the accounts
20 seamlessly from Lehman to Barclays. What DTC does is the
21 plumbing of that and handles all of the details in the settling
22 of the trades.

23 THE COURT: Is that how they describe themselves?

24 MR. HIRSHON: That's how I describe them because
25 until Sunday, I didn't understand any of this. But it is what

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1 spigots get turned on and off and how the pipeline is filled
2 and then emptied. So each day -- there are several different
3 clearinghouses. And each day the trades are matches and then
4 either a net number goes to Lehman or from Lehman to DTC or any
5 of its clearing companies. There was a depository that holds
6 all of the securities. The residential mortgages that you've
7 heard about that were going to be split fifty/fifty are in the
8 DTC registry. We hold them now. They are there. Originally,
9 the idea for the original transaction was to split those
10 fifty/fifty between Barclays and the estate. But in order to
11 facilitate the settlement of these accounts, the additional
12 fifty percent was needed so that DTC would not be at risk for
13 the settlement. So the --

14 THE COURT: So this modification principally is for
15 the benefit of your client?

16 MR. HIRSHON: Correct. And for the transaction,
17 because without it trading would have stopped. There would be
18 no business to sell because there would have been no -- no
19 trades cleared today. So it was to facilitate the transaction
20 as a friend to the transaction that this was done so that the
21 business continues to operate today. Now, the arrangement is
22 that the whole six billion dollars of residential mortgages
23 will be there and subject to settlement. But the anticipation
24 is that once all these claims settle, the trades that are from
25 Wednesday through Monday settle, there will not be a need for

1 all of that collateral. So what the amendment to the APA says
2 is that the fifty percent will be returned, as long as it's
3 there. If something really terrible happens in the world and
4 the settlements don't work and we have to use that collateral,
5 then there will be nothing to return. But the anticipation is
6 that if the world remains somewhat stable that the fifty
7 percent that was now transferred to Barclays will be
8 transferred back to Lehman. That is the expectation.

9 THE COURT: All right. I appreciate that
10 explanation.

11 One comment before you continue, Ms. Fife. I'm just
12 once again hearing the Geiger counter. And we are connected to
13 two extra courtrooms and I know that there are people
14 participating at various occasions by telephone through
15 CourtCall. And I'm hearing increased static on the line. So,
16 I'm just going to request everybody who is participating in
17 this hearing, whether by telephone or in person, who has an
18 electronic device to shut it off. And if you're on the phone,
19 since you're just listening, please mute your phone.

20 MS. FIFE: Thank you, Your Honor. I'll continue
21 going through some of the changes, if that's okay. There was a
22 provision in a deal originally which required the debtors to
23 transfer 700 million dollars in cash to Barclays. And that is
24 no longer the case. There's no cash that's being transferred
25 to Barclays.

1 In addition, there was a provision in the contract
2 where Barclays was going to purchase a company called Eagle
3 Energy Management and they are no longer going to purchase that
4 entity.

5 We clarified, because a number of creditors had some
6 concerns during the -- yesterday we had a meeting with the
7 creditors and they were asked some questions regarding
8 intercompany claims. We made it very clear in this
9 clarification that we are not transferring any intercompany
10 payables or receivables. Those remain with the particular
11 entities.

12 There was a reference in the agreement to a mortgage
13 that was on the 745 Seventh Avenue property. And as it turned
14 out, Your Honor, there is no mortgage on that property. So we
15 deleted that reference. There was a 500 million dollar
16 promissory note made by 745 in favor of an affiliate which will
17 be repaid and extinguished.

18 Those are the major changes to the transaction.
19 There were some other clarifications that we made but I don't
20 consider them material, Your Honor.

21 THE COURT: I still consider 500 million dollars
22 material, though.

23 MS. FIFE: Yes.

24 THE COURT: So, the money that's due an affiliate,
25 what affiliate is that? And as a result of the payment, how

1 does that impact the overall realization to the estate?

2 MS. FIFE: Umm --

3 THE COURT: Maybe it doesn't.

4 MS. FIFE: Yeah. I don't think it does, Your Honor.

5 We still anticipate that the full purchase price will be paid
6 to 745 and then transferred up to the holding company and the
7 note will be extinguished -- I'm sorry? Yeah. It already has
8 been extinguished.

9 THE COURT: Okay.

10 MS. FIFE: Do you have any further questions, Your
11 Honor?

12 THE COURT: I may have some as we proceed. It's hard
13 for me to tell, based upon this helpful oral presentation, how
14 the deal has moved in terms of material changes and whether or
15 not those changes affect, in any way, the objectors and whether
16 or not these are changes that make the objectors happy or sad.

17 MS. FIFE: Right.

18 THE COURT: It's unclear to me at the moment because
19 I haven't had a chance to reflect on it and I don't know what
20 documents have been prepared that will clarify this. But I'm
21 confident that as the evening progresses, I'll learn more.

22 MS. FIFE: Yes. We're hopeful that we'll have the
23 documents so that everyone can look at them. And just one
24 other thing I wanted to point out to Your Honor, we are keeping
25 approximately twenty million dollars -- twenty billion dollars

1 of assets in LBI that are not being transferred. So those
2 assets will have value and inure to the benefit to the SIPC
3 estate. Okay?

4 THE COURT: Thank you for that.

5 MS. FIFE: I'm now going to turn it over to Mr.
6 Miller.

7 MR. MILLER: Your Honor, I don't think it's necessary
8 to repeat that we did make another change in connection with
9 the time to object to cure amounts which was in --

10 THE COURT: I remember you said that before. One
11 thing I do want to take care of as a piece of unfinished
12 business from before the break. And that's the creditors'
13 committee's position with regard to the Citibank comfort order.

14 MR. DESPINS: Your Honor, there was a reason why
15 there was some -- we couldn't address it is 'cause our
16 conflicts counsel was going to look at those issues. Susheel
17 Kirpalani is here and he will address that, Your Honor.

18 MR. KIRPALANI: Good evening, Your Honor. Susheel
19 Kirpalani of Quinn Emanuel for the creditors' committee. Your
20 Honor, it's been represented to us that this is the same type
21 of relief that was requested with respect to the Chase motion.

22 THE COURT: It was represented to me as well.

23 MR. KIRPALANI: Yes, Your Honor. It appears that the
24 language is the same. The Chase motion -- or the Chase order
25 dealt with securities and cash. And so the language is a

1 My suggestion is for good order that we, at some
2 point, have a break. You and others will have an opportunity
3 to meet and confer and gain some additional information. And
4 that we proceed by way of proffer unless there's someone else
5 who has something to say on that subject.

6 MR. SABIN: Thank you, Your Honor.

7 THE COURT: Thank you.

8 MR. MILLER: Harvey Miller, Your Honor, for the
9 debtors, again.

10 If Your Honor please, I would offer proffer, the
11 testimony of Herbert H. McDade. If Mr. McDade, Your Honor,
12 were called to the stand to testify, he would testify to the
13 following effect:

14 Mr. McDade received a Bachelor of Arts degree from
15 Duke University and a Masters of Business Administration from
16 the University of Michigan.

17 After joining Lehman Holdings in 1983, Mr. McDade was
18 named head of Corporate Bond Department in 1991. In 1998 he
19 was named global head of Debt Capital Markets. In 2002 Mr.
20 McDade was named to Lehman Holdings Operating Committee. He
21 has served as global head of the Fixed Income Division for the
22 period June 2002 through 2005. In June of 2005 Mr. McDade
23 assumed the responsibilities of the global head of Equities
24 Division. Mr. McDade has over twenty-five years of experience
25 in managing a company's financial operations.

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1 Mr. McDade would testify that Lehman Holdings'
2 predecessor was founded in 1850. Since that time Lehman
3 Holdings grew into the fourth largest investment bank in the
4 world. He would testify that through Lehman Holdings'
5 subsidiaries, it is a global market maker in all major equity
6 and fixed income products. Lehman Holdings' subsidiaries are
7 members of all principal securities and commodities exchanges
8 in the United States, including FINRA and the NYSE. And
9 memberships on several principal international securities and
10 commodities exchanges, including London, Tokyo, Hong Kong,
11 Frankfurt, Paris, Milan, Singapore and Australia.

12 Lehman is a global leader -- was a global leader in
13 equity and fixed income sales, trading and research, investment
14 banking, private investment management, asset management and
15 private equity.

16 Mr. McDade would testify that the tightening of the
17 U.S. and international markets caused Lehman Brothers to
18 experience a severe liquidity crisis.

19 Now Lehman Holdings' broker-dealer subsidiary, Lehman
20 Brothers Inc., relies to a large extent upon funding from
21 Lehman Holdings, which is the public company and the issuer of
22 debt -- unsecured debt that provides funds for the entire
23 organization. And that such funding is no longer available to
24 provide to Lehman and LBI.

25 And as each hour has passed and uncertainty is

1 prolonged, investor's faith in the market has weakened the
2 value of Lehman's business and it has rapidly deteriorated.

3 The state of affairs at Lehman Brothers Holding Inc.
4 and LBI is critical and their fate just jeopardizes their
5 affiliates' ability to conduct business.

6 Absent approval of the Barclays' transaction, the
7 broker-dealer business would discontinue as a going concern and
8 adversely impact the credit markets on a global scale in ways
9 that are immeasurable.

10 He would testify that Lehman Brothers and its
11 advisors have literally spent every hour attempting to preserve
12 Lehman Holdings' estate and LBI's broker-dealer business.

13 Other than the liquidity crisis, Lehman has been
14 facing pressure and constraints from regulators and agencies.
15 The Federal Reserve, the SEC, the CFTC and other governmental
16 entities have been putting constant pressure on Lehman to
17 engage a prospective buyer and consummate a sale of the broker-
18 dealer business, no later than today, so that there is a
19 seamless transition to preserve the business.

20 Other than the pressures from regulators, Mr. McDade
21 would testify that the broker-dealer's customers are in a state
22 of panic. Vendors are threatening to stop providing services.
23 Lehman is experiencing severe internal pressures. He would
24 testify that it would be an understatement to state that the
25 morale of the employees is low. Employees have and will

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1 continue to defect. And the images on television of employees
2 streaming out of the Seventh Avenue headquarters with boxes and
3 suitcases with their possessions is self-evident proof of what
4 is happening.

5 He would testify that the broker-dealer business
6 services over 600,000 customer accounts, and that it could take
7 several months to transfer all of the accounts in the ordinary
8 course of business. In its current state the broker-dealer
9 does not have sufficient capital to service its customer
10 accounts while transferring them to another broker-dealer in
11 the ordinary course of business. The market value of customer
12 accounts is in the hundreds of billions.

13 Mr. McDade would testify that the broker-dealer is
14 dependent upon financing from Lehman Holdings Inc., the holding
15 company during the period prior to the Chapter 11 case.
16 Without access to financing, the broker-dealer is incapable of
17 servicing its customer accounts. As a result, the broker-
18 dealer would have no choice but to close its customer accounts
19 and that would result in billions of dollars of losses and
20 damages.

21 If the broker-dealer is not able to settle trades, a
22 SIPC trustee will commence a proceeding and there has been a
23 proceeding commenced consistent with the transaction that is
24 being proposed.

25 Mr. McDade would testify that during the past ten

1 days, he and Lehman's senior management, have been in constant
2 communications with Lehman's regulators. The regulators are,
3 for now, very supportive of the current transaction. In an
4 effort to facilitate the transaction, the SIPC trustee agreed
5 not to freeze customer accounts when the broker-dealer was
6 placed into a SIPC proceeding.

7 The regulators and agencies support the Barclays'
8 transaction. But they have made clear to Lehman that their
9 patience is limited and they are placing tremendous pressure on
10 all parties to close a transaction no later than today. The
11 state of Lehman's affairs have been widely publicized the world
12 over.

13 It has been widely reported in the media that Lehman,
14 its senior management and advisors have participated in
15 numerous meetings conducted by the Federal Reserve Bank. At
16 these meetings, the Federal Reserve Bank and Lehman met with
17 numerous financial institutions to attempt to find the solution
18 to the problem of Lehman's financial condition.

19 Also, as widely reported in the media, the financial
20 institutions that participated in those meetings included some
21 of the largest banks in the country.

22 Notwithstanding the help from regulators and other
23 governmental agencies, Lehman was not successful in reaching an
24 agreement with any of these parties as to a support for
25 continued operations.

1 Mr. McDade would testify that he first became
2 involved with this particular transaction Monday morning --
3 last Monday morning, I guess that was September 15, at 7 a.m.
4 in the morning. Since that time, he has been in constant
5 contact with senior management and Lehman's outside advisors
6 regarding the status and progression of the negotiations. The
7 negotiations leading up to the Barclays' transaction have been
8 at arm's length, objective, aggressively pursued by Barclays
9 and difficult, to say the least, Your Honor.

10 He would testify that since the collapse of Bear
11 Stearns and a subsequent takeover by JPMorgan, the Federal
12 Reserve Bank has made financing available to broker-dealers in
13 what is colloquially referred to as the window.

14 After the broker-dealer settles its trade at the
15 close of business, the clearing bank returns the collateral,
16 which Lehman then transfers to the Federal Reserve in exchange
17 for financing until the opening of business the next day. That
18 process, as the liquidity of Lehman's deteriorated, no longer
19 became possible. .

20 He would testify that in the climate of today's
21 market, a potential buyer of the broker-dealer business could
22 not operate without having access to the PDCF, the Primary
23 Dealer Credit Facility. That facility is not available to all
24 broker-dealers. Rather, it is available only to a limited
25 number of financial institutions who could meet the rules and

1 regulations of the Federal Reserve in respect thereof. And
2 that, Your Honor, is probably less than a dozen institutions.

3 He would testify that during the period of stress and
4 strain, the week before this week, Lehman attempted to interest
5 the Bank of America in an acquisition of Lehman's, and that,
6 unfortunately, did not come to fruition. At the same time, it
7 was negotiating an acquisition by Barclays of the Lehman
8 business. And that negotiation led to what I might call an
9 agreement that was subject to the -- he would testify it was
10 subject to the regulators throughout the world, and,
11 unfortunately, it became clear that that agreement could not be
12 consummated.

13 And immediately after that announcement was made, he
14 would testify that he and other officers of Lehman were called
15 to the Federal Reserve Bank in New York to meet with the
16 Federal Reserve Bank representatives, the SEC, and the United
17 States Treasury to deal with the problem confronting Lehmans.
18 And those meetings, he would testify, took place, Your Honor,
19 Sunday morning and ran into the late evening of that day. In
20 which it was made perfectly clear that it was necessary for the
21 protection of the public and the financial markets in an effort
22 to placate the public markets, or at least stabilize the
23 situation, that it is in the best interest of all parties that
24 Lehman Brothers Holdings Inc. commence a Chapter 11 proceeding.
25 And that it maintain, for LBI, access to the so-called window.

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1 And it was in that context, he would testify, that LBI was
2 enabled to go forward, at least for the past week.

3 He would also testify, Your Honor, Barclays, unlike
4 some of the larger and healthier financial institutions that
5 might qualify for access to the PDCF, does not have a North
6 American broker-dealer operation of this scale. Therefore, the
7 sale is a national extension of Barclays' business. Barclays
8 would have access to the PDCF and also will assume Lehman's
9 broad spectrum broker-dealer license.

10 Not only is this sale a good match economically but
11 it saves the jobs of thousands of employees and avoids losses
12 that could total in the hundreds of billions of dollars.

13 He would further testify, Your Honor, that he is
14 familiar with the asset purchase agreement, that he
15 participated in all of the negotiations involved in the asset
16 purchase agreement. And that those negotiations from time to
17 time broke out into different teams, but he was the team leader
18 for Lehman.

19 He would testify that the asset purchase agreement
20 provides for the sale of the North American broker-dealer
21 business of LBI, which includes banking and capital markets
22 business in addition to numerous other divisions.

23 The Seventh Avenue headquarters is being transferred
24 to Barclays, in addition to the various offices located
25 throughout the United States, that are integral to the broker-

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1 dealer business. The value of the real estate being
2 transferred to Barclays pursuant to the transaction is subject
3 to negotiation with respect of the appraised values. That the
4 building on Seventh Avenue is subject to an appraisal which has
5 been provided to Barclays. And that appraisal is in the area
6 of 900 million dollars to 100 million dollars. And that the
7 appraisal was done by CB Richard Ellis. And it was prepared
8 for the other debtor in this case, LB 745 LLC and Barclays
9 Capital Inc. And it is a voluminous appraisal of the
10 properties which we will offer into evidence at the appropriate
11 time, Your Honor.

12 And that he would also testify that an appraisal of
13 the two data centers was also directed and that CB Richard
14 Ellis was also engaged to undertake that appraisal. And that
15 appraisal has established the value for the purpose of the
16 negotiations, Your Honor. And as pointed out earlier in the
17 proceeding, those values have come in at slightly less -- I
18 shouldn't say slightly, less than was originally projected.

19 So that was a very negotiated term, and the reason
20 for the transfer of these properties, Your Honor, is that they
21 are integral to the smooth transition of the businesses.

22 Barclays will also assume exposure for the employees
23 that accept offers of employment, which is estimated to have a
24 value of approximately -- an exposure of approximately two
25 billion dollars.

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1 Barclays is also assuming the cure amounts relating
2 to contracts and leases that will be assumed pursuant to the
3 asset purchase agreement. And that has a potential exposure,
4 Your Honor, of 1.5 billion dollars that he would testify to.

5 Barclays is also paying the real estate transfer
6 taxes, which are estimated to be approximately thirty million
7 dollars.

8 Mr. McDade would testify that the financial community
9 has known that Lehman has been under stress for some time.
10 Certainly, going back to the time that Bear Sterns was bailed
11 out. Potential purchasers have known that Lehman has been
12 searching for a buyer since well before the Chapter 11 case
13 commenced. And that those ethics, those strategic alternatives
14 that were being pursued involved parts of Lehman as well as the
15 whole of Lehman. And that the notoriety attached to that did
16 not produce any interested parties other than the ones I
17 mentioned -- he mentioned.

18 During the meeting at the Federal Reserve Bank last
19 week, Bank of America, JPMorgan, Merrill Lynch and Barclays
20 were all present, showing interest in the broker-dealer assets.
21 It was clear to each party that if Lehman was unable to reach a
22 deal it would most likely have to commence cases under Chapter
23 11 of the Bankruptcy Code. That would not only have an adverse
24 impact upon their businesses but also upon the international
25 markets.

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1 He would testify that since the commencement of the
2 Chapter 11 case, Lehman's senior management and its advisors
3 have not undertaken an intensive marketing of the business and
4 the assets to be sold. But instead focused on reaching an
5 agreement with the most eligible interested buyer for these
6 assets.

7 That notwithstanding the lack of a specific program
8 for marketing, the sale of Lehman's broker-dealer business has
9 been known worldwide. And, yet, he would say nobody has
10 expressed an interest to step into the shoes of -- excuse me,
11 step into the shoes of Barclays, Your Honor.

12 Lehman has not received any other interest since the
13 commencement of the Chapter 11 cases. If Lehman was approached
14 by another potential buyer that he would consider the offer,
15 provided that the company had sufficient liquidity to operate
16 the business without jeopardizing customer accounts. That has
17 not happened, Your Honor. So it is almost academic.

18 Mr. McDade would testify, Your Honor, that if the
19 sale with Barclays is consummated, customer accounts would
20 continue on a seamless, uninterrupted basis and trading would
21 continue on a normal basis, thereby maintaining the billions of
22 dollars in value.

23 At the same time, the jobs of thousands of employees
24 would be saved and will be entitled to substantial benefits
25 from Barclays in the form of compensation, bonuses and

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1 severance payments that are based upon the employee's prior
2 performance while with Lehman.

3 He would testify to the consummation of the
4 transactions makes available a greater pool of assets to the
5 debtors' estates, because the exposure under Lehman Holdings
6 guarantee to the broker-dealer will be substantially less. If
7 the transaction does not close today or over this weekend, Your
8 Honor, Mr. McDade would testify that the effect on the broker-
9 dealers business and on Lehman Holdings would be devastating.
10 First, the failure to consummate the transaction would cause
11 default under the DIP facility and require Lehman Holdings to
12 repay the outstanding amounts under that facility.

13 He would testify that the liabilities in the hundreds
14 of billions of dollars would be triggered against Lehman
15 Holdings which would in turn deplete the property available to
16 distribution to creditors. It would adversely affect the
17 debtors other nondebtor subsidiaries to the extent they have
18 any value.

19 He would testify, Your Honor, that if the transaction
20 is not consummated, it will result in the largest failure of a
21 broker-dealer in the history of the United States and will
22 cripple the credit markets for some time to come.

23 He would further testify, Your Honor, that the shock
24 of this transaction not being consummated in the public markets
25 could be immeasurable and could ignite a panic in the financial

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1 condition that we now face in the United States.

2 He would testify that it is essential to an orderly
3 financial market that this transaction be consummated as early
4 as possible in the interest of all stakeholders of these two
5 cases. And in the interest of the public in general and the
6 economy in general, and to avoid a dislocation in the market,
7 Your Honor.

8 Thank you, Your Honor.

9 THE COURT: And that concludes the proffer?

10 MR. MILLER: Yes, Your Honor.

11 THE COURT: Is there anyone who wishes to cross-
12 examine Mr. McDade with respect to the proffer or may I simply
13 accept the proffer in the form it has been offered by Mr.
14 Miller without further examination?

15 MR. QURESHI: Your Honor, Abid Qureshi, Akin, Gump,
16 Strauss, Hauer & Feld on behalf of an ad hoc group of
17 noteholders of LBHI. We would like to cross-examine the
18 witness.

19 THE COURT: All right. Mr. McDade should come to the
20 stand then.

21 (Witness is sworn)

22 CROSS-EXAMINATION

23 BY MR. QURESHI:

24 Q. Good evening, Mr. McDade. You testified through the
25 proffer that you were involved in the negotiations concerning

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